

R E M A R K S

Claims 10 to 17, 19, 20 and 22 to 31 as presented with applicants' paper of April 30, 2008, are currently pending.

The Examiner requested that applicants provide a substitute specification, including a marked-up version thereof, both of which are presented herewith. For the Examiner's convenience, applicants have formatted the marked-up copy of the substitute specification such that the page- and line-breaks of the original application are maintained as far as possible. More specifically, the following changes have been effected and are indicated in the marked-up copy of the substitute specification:

- On page 1 in indicated line 3:
A cross-reference to the data of the parent application has been added in accordance with applicants filing request of January 14, 2002, and the subsequent amendment of October 07, 2002;
- On page 5 in indicated line 24:
The translator's annotation >[sic]< was herewith deleted;
- On page 6 in indicated line 22:
The translator's annotation >[sic]< was deleted with applicants' amendment of June 15, 2007;
- On page 7 in indicated lines 39 to 47:
The formula originally designated as >(I) [sic]< was corrected herewith and with applicants' previous amendments of January 14, 2002, February 26, 2004, May 24, 2004 and June 15, 2007, on the basis of page 7, indicated lines 36 to 38, of the original application in conjunction with the representation of formula III provided in original Claim 2 of the application, and the representation of the group J₁ as set forth on page 4, indicated lines 1 to 5, of the original application ;
- On page 8 in indicated line 32:
The expression >. Furthermore< was replaced by "<; *furthermore*>" with applicants' amendment of May 24, 2004;
- On page 8 in indicated line 40:
The definition of R¹³ and R¹⁴ originally disclosed on page 5, indicated lines 31 and 33, was supplemented with applicants' amendment of January 14, 2002;

- On page 9 in indicated lines 11 and 12 of the original application, corresponding to page 9, indicated lines 10 and 11 of the marked up copy submitted herewith:

The definition of R¹ was revised to replace >< by “,” and >and< by “or” with applicants’ amendment of January 14, 2002;

- On page 9 in indicated lines 29 to 35:

The representation of formula III was corrected corresponding to the change effected on page 7, indicated lines 39 to 47, herewith and with applicants’ amendments of January 14, 2002, February 16, 2004, and May 24, 2004;

- On page 13 in indicated lines 19 and 20:

The embodiments defined in original Claims 6 and 7 were introduced with applicants’ amendment of April 30, 2008, to provide proper antecedent basis of the respective subject matter;

- On page 15 in indicated line 12:

The expression >benzothiadiazinones [sic]< was corrected to read “benzothiadiazinones” with applicants’ amendment of June 15, 2007;

- On page 19 in indicated lines 8 to 10 of the original application, corresponding to page 19, indicated lines 8 to 11 of the marked up copy submitted herewith:

The expression >2-{1-[2-(-(4-chlorophenoxy)propyloxyimino)butyl]-3-hydroxy-5-(2H-tetrahydrothiopyran-3-yl)-2-cyclohexen-1-one [sic]< was corrected to read “2-{1-[2-(4-chlorophenoxy)propyloxyimino]butyl]-3-hydroxy-5-(2H-tetrahydrothiopyran-3-yl)-2-cyclohexen-1-one” with applicants’ amendment of June 15, 2007;

- On page 19 in indicated lines 24 to 26:

The expression >2-{1-[2-(-(4-chlorophenoxy)propyloxyimino)butyl]-3-hydroxy-5-(2H-tetrahydrothiopyran-3-yl)-2-cyclohexen-1-one [sic]< was corrected to read “2-{1-[2-(4-chlorophenoxy)propyloxyimino]butyl]-3-hydroxy-5-(2H-tetrahydrothiopyran-3-yl)-2-cyclohexen-1-one” with applicants’ amendment of June 15, 2007;

- On page 19 in indicated lines 27 and 28 of the original application, corresponding to page 19, indicated line 28 of the marked up copy submitted herewith:

The expression >atrazin and terbutylazine, dicamba, diflufenzopyr, diflufenzopyr-Na.< was herewith corrected to read “atrazin, terbutylazine, dicamba, diflufenzopyr and diflufenzopyr-Na.”

- On page 23 in indicated lines 9, 11, 12 and 29 to 31:

Each occurrence of the expression >% [sic]< was corrected to read “g” with applicants’

amendments of January 14, 2002, and of June 15, 2007;

- On page 23 in indicated line 15:

The expression >7,1< was corrected to read “7.1” with applicants’ amendment of January 14, 2002;

- On page 25 in indicated lines 5 to 7:

Each occurrence of the expression >% [sic]< was corrected to read “g” with applicants’ amendments of January 14, 2002, and of June 15, 2007;

- On page 26 in indicated lines 5 to 7:

Each occurrence of the expression >% [sic]< was corrected to read “g” with applicants’ amendments of January 14, 2002, and of June 15, 2007;

- On page 28 in indicated line 47:

The expression >% [sic]< was herewith corrected to read “g”.

No new matter has been added to the application.

The Examiner rejected Claims 10 to 17 and 19 to 31 under 35 U.S.C. §112, ¶1, as containing subject matter which lacked an adequate written description.

The Examiner alleged that the part (c) proviso constituted new matter. Applicants’ respectfully disagree. An negative limitation or exclusionary proviso must have basis in the original disclosure. However, where alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. “[*The*] specification, having described the whole, necessarily described the part remaining.”¹⁾ Moreover, a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a *prima facie* case for lack of descriptive support.²⁾ Essentially the same rational is applicable where the Examiner’s criticism is concerned that the specification never specifically discloses the expression “*consisting essentially of*” which is employed in applicants’ Claim 31. Again, the specification, having described the whole, necessarily described the remaining part.

The Examiner further alleged that the reference to “*at least*” one of the components (c) to (d) in Claim 31 constituted new matter. However, it is well settled that a description need not be *ipsis verbis* in order to be sufficient.³⁾ If a skilled artisan would understand the inventor to be in

1) See *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977); see also *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff’d* mem., 738 F.2d 453 (Fed. Cir. 1984).

2) Cf. MPEP §2173.05(i) citing *Ex parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993).

3). *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972).

possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met.⁴⁾ On the one hand, applicants' disclosure explains that each of the constituents (c) to (e) constitute optional ingredients.⁵⁾ Accordingly, applicants' disclosure addresses mixtures which contain one or more, at least one, or even all, of the constituents (c) to (e). On the other hand, applicants' disclosure details illustrative examples of solid mixtures in which one or more of the constituents (c) to (e) are present.⁶⁾ Given the information which is provided by applicants a skilled artisan would readily understand that applicants were in possession of the claimed invention at the time of filing.

Additionally, the Examiner alleged that the particle sizes and the weight percentages reflected in Claims 24 to 31 constituted new matter. In this regard, the Examiner's attention is respectfully drawn to

- the paragraph on page 14, indicated lines 15 to 18, of the original application, which addresses the weight percentages in which component (a) may be employed in accordance with applicants' invention;
- the paragraph on page 14, indicated lines 20 to 22, of the original application, which addresses the weight percentages in which component (b) may be employed in accordance with applicants' invention;
- the paragraph on page 19, indicated lines 30 to 32, of the original application, which addresses the weight percentages in which component (c) may be employed in accordance with applicants' invention;
- the paragraph on page 20, indicated lines 12 to 14, of the original application, which addresses the weight percentages in which component (d) may be employed in accordance with applicants' invention; and
- the statement on page 21, indicated lines 18 and 19, of the original application: "*The mean particle size of the granules is generally between 200 μ m and 2 mm.*"

The referenced sections clearly corroborate that the particle sizes and weight percentages of Claims 24 to 31 do not add new matter to the application as the Examiner would have it.

Lastly, the Examiner alleges that applicants' disclosure is insufficient to reasonably convey to a person of ordinary skill in the art that applicants were in possession of the sulfonylurea herbi-

4) See, e.g., Vas-Cath, 935 F.2d 1555, 1563, 19 USPQ2d 1111, 1116 (Fed. Cir. 1991).

5) Cf., e.g., page 14, indicated line 24 et seq., page 19, indicated line 34 et seq., and indicated line 16 et seq., of the original application.

6) Cf., e.g., page 14, indicated line 1, to page 33, indicated line 43, of the original application.

cides which are employed as component (a) of the claimed solid mixtures at the time the application was filed. However, a person of ordinary skill will readily appreciate that sulfonylurea herbicides were well known in the art at the time the application was filed, as was previously corroborated by applicants.⁷⁾ Additionally, applicants respectfully draw the Examiner's attention to the disclosure of *Bedbrook et al.* in *US 5,605,011 (1997)* which provides in cols. 28 to 32 an overview over some of the sulfonylurea herbicides which were known in the art at least as early as of March 1988,⁸⁾ i.e., 10 years prior to the earliest effective U.S. filing date of the present application. The disclosure of *Bedbrook et al.* further corroborates that the sulfonylurea herbicides, in spite of a certain variance in their structure, are not widely divergent in function as the Examiner erroneously asserts, but were known to be herbicides which act as ALS inhibitors. The invention which is disclosed and claimed by applicants does not reside in novel sulfonylurea herbicides per se. Rather, applicants' invention provides for particular solid, storage-stable mixtures which *inter alia* comprise otherwise known sulfonylurea herbicides. It is well settled that an application need not teach, and preferably omits, that which is well known in the art.⁹⁾ On the basis of the technical background knowledge of a person having ordinary skill in the pertinent art as reflected, e.g., in the above-referenced patent or at the outset of applicants' disclosure, a person of ordinary skill in the art, therefore, had no reason to doubt that applicants had possession of the claimed invention at the time the application was filed.

Therefore, and for the reasons already presented in applicants' paper of June 15, 2007,¹⁰⁾ the Examiner's position that applicants' Claims 10 to 17 and 19 to 31 contained subject matter which was not described in the application in such a way as to reasonably convey to a person of ordinary skill that applicants had possession of the invention at the time of filing is deemed to be in error. Favorable reconsideration of the Examiner's position and withdrawal of the respective rejection is deemed equitable and is respectfully solicited.

The Examiner further rejected Claims 10 to 17 and 19 to 31 under 35 U.S.C. §112, ¶1, for allegedly failing to meet the enablement requirement. In this context the Examiner alleged in particular that the specification failed to enable a person skilled in the pertinent art to make and/or use the invention commensurate in scope with all sulfonylurea herbicides, notably excluding met-

7) Cf., e.g., applicants' paper of December 05, 2006, and the evidence enclosed therewith.

8) Date of the continuation-in-part application of which *Bedbrook et al.*'s patent claims benefit.

9) *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81 (Fed. Cir. 1986); *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984).

10) The arguments and remarks presented in the respective paper are herewith incorporated by reference.

sulfuron methyl¹¹⁾ which is employed as one of the representative sulfonylureas and the use of which is illustrated, e.g., in Examples 15 and 16 of the application. The Examiner's respective argument suggests that the Examiner considers a person of ordinary skill in the pertinent art to be incapable of, for example, repeating applicants' Example 15 or 16 and using a sulfonylurea herbicide which is different from metsulfuron methyl. It is not readily apparent to applicants, and the Examiner has not provided any rationale, why a person of ordinary skill in the pertinent art would require undue experimentation in order to arrive at a solid mixture corresponding, for example, to the mixture illustrated in applicants' Example 15 but comprising a sulfonylurea herbicide other than metsulfuron methyl, namely by intensively mixing and grinding a mixture of

6.9 g of any otherwise known sulfonylurea herbicide

3 g of Tamol^R NH

6 g of Ufoxane^R 3A

15 g of Extrasil^R

43.1 g of ammonium sulfate

using a laboratory high-speed rotary mill, by then mixing the resulting powder mixture with 25 parts of AG^R 6202 in a planetary mixer (e.g., Kenwood Chef), by subsequently extruding the resulting material using an extruder (e.g., DGL-I, Fitzpatrick Europe), and finally by drying the resulting moist granules in a fluidized-bed dryer.

To the extent that the Examiner may deem a person of ordinary skill in the pertinent art incapable of providing a sulfonylurea herbicide other than metsulfuron methyl it is respectfully reiterated that the sulfonylurea herbicides are well known in the pertinent art. As evidenced, for example, by the disclosure of *Bedbrook et al.* it was well accepted in the art at the time applicants' filed their application that sulfonylurea herbicides exhibit herbicidal activity due to their ALS inhibitory properties. Considering the well established background knowledge that existed in the herbicidal art at least 10 years prior to the earliest effective U.S. filing date of the application, the Examiner's criticism "*no one skilled in the art would accept the assertion that the instantly claimed agents could be predictably used for controlling undesirable plant growth by using solid mixtures as inferred by the claim and contemplated by the specification*"¹²⁾ is deemed to lack any reasonable basis. The Examiner also stated with a view to the disclosure of *Hirai et al.* "*Prediction to make any mixture or to predict any property for such large number of compounds having different chemical structure and different properties is impossible as can be seen in the cited reference.*"¹³⁾ Nota-

11) Office action page 9, lines 9 to 15.

12) Office action page 11, indicated lines 12 to 15.

13) Cf. Office action page 12, lines 9 to 19, at lines 18 and 19.

bly, *Hirai et al.* address “Sulfonylurea Acetolactate Synthase [ALS] Inhibitors” among “Modern Herbicide Classes and Agrochemical Characteristics.” As such, there is no need for a person of ordinary skill in the pertinent art to restore to “predictions” where the herbicidal effectivity of the known sulfonylurea herbicides is concerned. The Examiner’s reference to the background art mentioned by applicants on page 7, indicated lines 36 to 39, of the application is not understood. *Hirai et al.* mention by far more patent disclosures in column 4 of Table 1 on pages 181 to 183 of the reference. Although the class of sulfonylurea herbicides encompasses a large number of compounds, these compounds as well as their herbicidal effectivity was well documented at the time applicants made the invention. Again, there is no need for a person of ordinary skill in the pertinent art to restore to “predictions” where the herbicidal effectivity of the sulfonylurea herbicides is concerned.

Therefore, and for the reasons already presented in applicants’ papers of December 05, 2006, and of June 15, 2007,¹⁴⁾ the Examiner’s position that applicants’ disclosure failed to enable the subject matter of applicants’ Claims 10 to 17 and 19 to 31 is deemed to be in error. Favorable reconsideration of the Examiner’s position and withdrawal of the respective rejection is deemed equitable and is respectfully solicited.

Additionally, the Examiner rejected Claims 10 to 17 and 19 to 31 under 35 U.S.C. §103(a) as being unpatentable in light of the teachings of *Kocur et al.* (US 5,258,358), *Malik et al.* (H224) and a Product Information Sheet of *DuPont* regarding the sulfonylurea herbicides Escort®, Oust® and Telar®. In particular, the Examiner pointed out

- 1) that liquid compositions comprising glufosinate-ammonium and alkyl polyglycosides (*in the following also referred to as APGs*), optionally in combination with sulfonylurea herbicides, were described by *Kocur et al. inter alia* as being storage-stable;¹⁵⁾
- 2) that *Malik et al.*, albeit being silent with regard to sulfonylurea herbicides, showed that APGs may be employed in liquid as well as in solid compositions for agro-chemicals;¹⁶⁾ and
- 3) that *DuPont* described the formulation of certain sulfonylurea herbicides in form of dispersible granules as being stable.¹⁷⁾

More specifically, the Examiner argued:¹⁸⁾ “*One skilled in the art would have been motivated at*

14) The arguments and remarks presented in the respective papers are herewith incorporated by reference.

15) E.g., Office action page 20, lines 7 to 13, and page 24, lines 1 to 3.

16) E.g., Office action page 21, line 10, to page 22, line 3.

17) E.g., Office action page 19, line 8, to page 20, line 6.

18) Office action page 23, line 6, to page 24, line 3.

the time of invention to prepare any solid composition of any herbicides such as sulfonylureas and alkyl polyglycosides because the prior art of MALIK et al and DUPONT teach these compositions, their uses, and their process of making. The solid composition has been taught by the prior art. Therefore, one skilled in the art who needs to prepare a solid composition of herbicide sulfonylurea and polyglycosides would be able to make and/or use it because the prior art teaches such compositions and their uses. One skilled in the art would have been motivated at the time of invention to make the composition of alkylpolyglycoside and sulfonylurea herbicides as presently claimed because the KOCUR et al teaches the effective and advantageous combination of alkylglycosides and sulfonylurea herbicides and glufosinate. ... Also, the motivation is provided by KOCUR because it teaches the combined formulations sulfonylureas and polyalkylglycosides are storage-stable, undergo virtually no chemical changes, and are simple to handle.”

An invention is patentable under the provisions of Section 103(a) unless “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”¹⁹⁾ “In determining whether the invention as a whole would have been obvious under 35 U.S.C. 103, we must first delineate the invention as a whole. In delineating the invention as a whole, we look not only to the subject matter which is literally recited in the claim in question... but also to those properties of the subject matter which are inherent in the subject matter and are disclosed in the specification. . . Just as we look to a chemical and its properties when we examine the obviousness of a composition of matter claim, it is this invention as a whole, and not some part of it, which must be obvious under 35 U.S.C. 103.”²⁰⁾ Moreover: “[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the ‘subject matter as a whole’ which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103.”²¹⁾

Applicants have found that the stability of sulfonylureas which are in a solid formulation in combination with a surfactant is not satisfactory at elevated temperature. More specifically, applicants have found that such formulations generally suffer undesirable losses of the sulfonylurea due to a significant degradation of the active ingredient when such formulations are exposed to elevated temperatures. As corroborated by the data compiled in Table 3 on page 35 of the application, at least 52 and up to 84% of the sulfonylurea content of the comparative formulations illustrated

19) 35 U.S.C. §103(a), emphasis added.

20) *In re Antonie*, 559 F.2d 618, 620, 195 USPQ 6,8 (CCPA 1977); emphasis in original, citations omitted.

21) *In re Spinnoble*, 405 F.2d 578, 585, 160 USPQ 237, 243 (CCPA 1969).

in Examples C1 to C4 was lost upon storage of the formulations for a period of 2 weeks at 54°C (129° F). The storage stability of a formulation at elevated temperature, however, is crucial especially in warm climate areas and during warm seasons because end-users of the formulation generally lack facilities to store the formulation in a climate controlled fashion at sufficiently low temperatures.

In contrast to the comparative formulations illustrated in Examples C1 to C4, the formulations in accordance with applicants' invention, at most, showed a decrease in the sulfonylurea content by 38% (c.f. *Examples 11 and 15*) and generally only lost considerably less than 20% of the active ingredient. This particular advantage of applicants' mixtures is clearly unexpected in light of the information which was available at the time applicants made their invention, and more specifically, applicants' invention as a whole, therefore, cannot be deemed to be rendered obvious by the references upon which the Examiner relied in the rejection.

The Examiner argued that *DuPont* teaches solid formulations of sulfonylurea (namely Escort, Oust and Telar) to be stable and refers to the "stability" paragraph on page 1 of the *DuPont* reference. Indeed, it is stated that these solid formulations have proven to be stable when stored in their original containers "at normal temperatures." Normal temperatures, however, are temperatures of about 20 to 25°C (i.e., 68 to 77° F).

DuPont also mentions that the half-life of the sulfonylurea herbicides decreases rapidly as temperature increases from 45° F to 95° F (i.e., from 7 to 35°C). This statement, however, refers to hydrolysis of an aqueous dilution and not to a solid formulation. Additionally, a temperature of 95° F (35°C) is relatively close to "normal temperatures." As discussed previously, the storage stability of the solid formulation is not to be confused with the biodegradability or with the hydrolysis half-life of the sulfonylurea. The distinction which has to be made is confirmed by the *DuPont* reference itself, which states in the paragraph addressing "stability" that Escort, Oust and Telar dispersible granules have proven to be stable at normal temperatures. In the same paragraph, the *DuPont* reference notes that (aqueous) spray preparations of Telar, Escort and Oust may degrade in acidic solutions within 24 or 48 hours. The distinction between the storage stability on the one hand, and the biodegradability and the hydrolysis half-life on the other hand, is further confirmed by the paragraphs regarding "soil dissipation and biodegradability" and "hydrolysis half-life" of the *DuPont* reference which expressly state that "*the most common and significant break-down processes are chemical hydrolysis and microbial degradation*" and "*chemical hydrolysis, followed by microbial degradation are major factors in the disappearance of these compounds from the soil.*" As such, a person of ordinary skill learned from the *DuPont* reference that a solid formulation of Oust, Escort or Telar may be stable at normal temperatures but that the active ingre-

dient may suffer from chemical breakdown when diluted with water and/or when applied to the soil. This is not an inconsistency because the chemical environment in the formulation is completely different from the chemical environment in a diluted spray preparation or in soil.

The Examiner alleged that the disclosure of *Kocur et al.* showed formulations comprising sulfonylureas and alkyl polyglycosides which “*are storage stable, undergo virtually no chemical changes and are simple to handle.*” However, a person of ordinary skill in the pertinent art would duly take note of the fact that *Kocur et al.* are concerned about the stability of glufosinate-ammonium in aqueous formulation,²²⁾ and in particular about the stability of such formulations at low temperatures.²³⁾ In fact, the data concerning storage stability which are disclosed by *Kocur et al.* in the context of the illustrative examples pertain to properties of the aqueous preparations at temperatures between -25°C and 20°C (*i.e.*, -13°F to 68°F). As previously pointed out by applicants, the reaction rate, *e.g.*, the rate at which a sulfonylurea which may be present in the formulation of *Kocur et al.* degrades, is dependent on the temperature. Therefore, and because *Kocur et al.* address aqueous formulations, the reference does not provide a person of ordinary skill in the pertinent art with any information which would allow a reasonable conclusion as to the properties of a solid formulation comprising a sulfonylurea herbicide in combination with an alkyl polyglycoside upon storage at elevated temperatures.

Moreover, a person having ordinary skill in the art and contemplating the disclosures of *DuPont* and of *Kocur et al.* together could not draw any reasonable conclusions concerning the storage stability at elevated temperatures of a sulfonylurea herbicide which is in a solid preparation comprising an alkyl polyglycoside. Again, as applicants have shown, the presence of other surfactants give rise to a severe degradation and losses of the sulfonylurea herbicide upon storage of the preparation at elevated temperatures. The disclosure of *Malik et al.* is silent with regard to the storage stability of formulations in which the alkyl polyglycosides are employed and also fails to mention sulfonylurea herbicides. As such, a person of ordinary skill in the pertinent art who contemplated the disclosure of *Malik et al.* together with the disclosures of *DuPont* and of *Kocur et al.* could not reasonably expect that a solid mixture comprising a sulfonylurea herbicide in combination with an alkyl polyglycoside would exhibit a storage stability which was distinctly different from, and significantly better than, the storage stability of a solid mixture comprising a sulfonylurea herbicide in combination with another customary surfactant.

As pointed out at the outset, the invention as a whole includes the properties which result from the particular combination of elements literally recited in the claims, and the discovery of the

22) Col. 1, indicated lines 24 to 30, of *US 5,258,358*.

23) Col. 1, indicated lines 44 to 48, of *US 5,258,358*.

source of a problem is a part of the subject matter as a whole which should be considered in determining the obviousness of a claimed invention under Section 103(a). The foregoing, as well as the reasons already presented in applicants' papers of February 28, 2006, December 05, 2006, June 15, 2007, and April 30, 2008,²⁴⁾ therefore show that applicants' invention cannot be deemed to be unpatentable under the provisions of Section 103(a). The respective reasons and remarks also show that the combination of elements which characterizes applicants' invention cannot be deemed to "*yield no more than one would expect from such an arrangement*" as the Examiner would have it.²⁵⁾

Therefore, and for the reasons already presented in applicants' previous papers, the Examiner's position that the subject matter of applicants' Claims 10 to 17 and 19 to 31 is unpatentable under Section 103(a) is deemed to be in error. Favorable reconsideration of the Examiner's position and withdrawal of the respective rejection is deemed equitable and is respectfully solicited.

As an aside it is noted that the Examiner asserted that applicants' claims allowed for the presence of glufosinate in the solid preparation because the term "comprising" allowed for additional ingredients to be added.²⁶⁾ Applicants' respectfully disagree. The term "comprising" may leave the claim open to additional unrecited elements, even in major amounts. However, further active compounds are not an unrecited element with regard to applicants' claims as such active compounds are recited as constituent (c). Accordingly, while applicants' claims may be open to the addition of additional unrecited elements, the claims cannot be deemed to allow for the presence of any aminophosphoric acids including glufosinate as further active compound(s).

The Examiner also urged applicants to disclose any prior art which may have been disclaimed in Claim 10. It is respectfully submitted that applicants are not aware of any prior art which discloses a solid mixture comprising a sulfonylurea herbicide, an alkyl polyglycoside and active aminophosphoric acids.

24) The arguments and remarks presented in the respective papers are herewith incorporated by reference.

25) Office action page 27, lines 11 to 15, page 28, lines 6 to 9, and page 29, lines 1 to 7.

26) Office action page 23, lines 16 to 18.